U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, Philadelphia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent passport in connection with his entry into the United States on an unspecified date during the summer of 1996. The applicant subsequently married his U.S. citizen spouse on April 27, 2001, in Elkton, Maryland. The applicant's spouse then submitted a Petition for Alien Relative (Form I-130), on behalf of the applicant on April 30, 2001, and the applicant simultaneously applied for adjustment of status pursuant to section 245 of the Act. The I-130 petition was approved on July 31, 2002. During the course of the applicant's adjustment of status interview it became apparent that the applicant had entered the United States through fraud, and not by entering without inspection as he had originally indicated. The applicant, through counsel, was advised to submit a Application for a Waiver of Grounds of Excludability (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to seek a waiver of the ground of inadmissibility and allow him to remain in the United States with his United States citizen spouse.

The district director issued a decision denying the waiver application on August 8, 2002, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case his U.S. citizen spouse. *Decision of the District Director,* dated August 8, 2002. Counsel submitted an appeal on September 4, 2002, providing a brief statement in support of the appeal which was supplemented by a brief and additional evidence on October 3, 2002.

On appeal, counsel argues that numerous factors support the grant of the waiver and alleges that the district director erred in finding that the applicant submitted no evidence in support of the application. We will first address the second argument and will then proceed to examine the evidence contained in the record, including the additional evidence received on appeal.

Counsel's brief states that the August 8, 2002 decision issued by CIS "erroneously stated that no hardship evidence was submitted by the respondent" and notes that two letters, one from the applicant's wife and one from his mother-in-law had been submitted. *Counsel's Appeal Brief* at p. 2. We agree with counsel that the district director erred in finding that no evidence had been submitted in support of the appeal and denying the petition on that basis. *See Decision of the District* Director dated August 8, 2002. Although the letters from the applicant's wife and mother-in-law were not submitted along with the waiver application itself, the record contains a letter dated July 8, 2002, in which counsel responds to a request from CIS for evidence of hardship by submitting the aforementioned two letters. *See Counsel's Letter* dated July 8, 2002.[1] The district director's decision, therefore, was not issued based on the actual state of the record. However, rather than remand the case, the AAO will exercise its authority to review the case de novo. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

On appeal, counsel asserts that the waiver application should be granted based upon the hardship that will befall the applicant's U.S. citizen spouse due to her separation from family in the United States including her son and mother. Furthermore, counsel notes that the applicant's wife would experience extreme hardship due

[1] We note that since the letters were submitted subsequent to the filing of the waiver application, it is possible that the materials had not yet reached the file at the time of the district director's adjudication of the waiver application.

to the difficult economic and political situation in Jamaica. In particular, counsel emphasizes the high unemployment rate, the country's propensity for adverse weather, and the breakdown of law and order due to its political and economic instability. *See Counsel's Appeal Brief pp 3-8.* Counsel also attaches various exhibits on appeal, including letters from the applicant's spouse and mother-in-law, and various other exhibits offered for the first time on appeal. This decision will address all arguments and supporting documents now in the record.

The record contains several documents and exhibits in support of the application. The principal documents submitted include letters from the applicant's wife and mother-in-law detailing the love and affection within the family unit and detailing the hardship that the family will experience as a result of the applicant's exclusion from the United States. The record also contains a statement from the applicant explaining the circumstances surrounding his admission to the United States using a false passport. The additional evidence submitted on appeal includes the following: a letter from [redacted] a missionary of the True United Church of Jesus Christ (Apostolic) regarding the applicant's participation in and support of her church; a letter of recommendation from [redacted] who had employed the applicant and had known him for several years; an undated letter in support of the applicant by an individual identified only as Police [redacted] who asserts that the applicant's departure would be difficult for his wife and child, and further states that the applicant would be an asset to the country; a letter from [redacted] who recommends the applicant and considers him like family; a letter of reference fro[redacted] who speaks of the applicant's devotion to his family; additional letters from the applicant's wife and mother-in-law; articles from the Jamaican press regarding difficulties Jamaica is experiencing with the economy, its political system, and crime. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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> (ii) Falsely claiming citizenship. –
>
> (I) In General –
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> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that during the summer of 1996 the applicant entered the United States through the use of a fraudulent passport. He married his U.S. citizen spouse who then filed an I-130 on his behalf. The applicant subsequently filed the Form I-601 waiver application.

Counsel contends that the district director erred in failing to consider the evidence submitted and on that basis denying the application. Counsel asserts that the evidence in the record establishes that applicant's removal would result in extreme hardship to his U.S. citizen family members. [2]

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel has offered the previously described documentation in support of the waiver application. The majority of the documents offered serve as letters of recommendation for the applicant in support of his efforts to remain in the United States. They could be considered as positive discretionary factors. However, very few of them relate to the issue of whether the applicant is able to establish that the failure to grant the

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[2] Although the record contains numerous references to the hardship that will be suffered by the spouse's U.S. citizen child, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

waiver application, and his subsequent removal from the United States will result in extreme hardship to his U.S. citizen spouse.

The principal documents, which do address the issue of extreme hardship, are the letters submitted by his wife and his mother-in-law. However, those documents, while they do indicate that the applicant has a close and supportive relationship with his family, do not establish that his wife will suffer extreme hardship as a result of the applicant's inability to remain in the United States. The letters from the applicant's mother in-law, dated July 1, 2002 and October 2, 2002, assert that her daughter and grandson will suffer if he is required to leave the United States because he has been a good husband and father. The letters primarily discuss the relationship that has developed between the applicant and her grandson and the fact that he has stepped into the role of the child's father and is actively involved in his life. The letters also state that the applicant has been a good husband to her daughter, and that she is hurt by the thought of his possible departure from the United States. Finally, the letters urge the applicant be given a second chance.

The record also contains the two letters submitted by the applicant's spouse. Those letters likewise address the close relationship between the applicant and his stepson, and further indicate that the prospect of losing her husband has caused her pain, suffering and extreme hardship. In particular, the applicant's spouse asserts that she would be unable to pay the family's financial obligations without his assistance, citing the fact that they have acquired a home and a car. *See Letter from* [redacted] dated October 2, 2002. However, the record does not contain any corroborating evidence such as evidence of the couple's outstanding loan balances on their home or car. Moreover, there appears to be evidence in the record that contradicts these assertions. For example, the record contains the couple's joint tax return for the 2001 tax year, which reflects that the couple had a reported combined income of $25,256, of which more than $22,880 appears to be attributable to the U.S. citizen spouse's position as a Certified Nursing Assistant at Chestnut Hill HealthCare. *See 2001Form 1040 U.S. Individual Tax Return* and *Letter from Chestnut Hill HealthCare* dated April 27, 2001. In addition, the record reflects that the applicant's spouse submitted an Affidavit of Support (Form I-863), in connection with the applicant's adjustment of status application filed by the applicant. That I-863 indicates that the applicant's spouse represented that she was able to support the applicant as well as her household based upon her employment and available assets. Consequently, the evidence does not support the contention that the U.S. citizen spouse is financially dependent upon the applicant. The fact that she and the applicant may have acquired assets that will prove difficult to maintain on her income alone, while constituting a hardship, is not the type of hardship that an be considered to be extreme.

In addition to the claims of financial hardship, the applicant's spouse states that her emotional suffering has had an adverse effect upon her performance at work such that she "had to stop for a little while." *See Letter from* [redacted] dated October 2, 2002. In terms of physical ailments, she asserts in her letter that the stress has caused her to lose thirty-five pounds, and caused her hair to begin falling out. *Id.* However, no independent evidence of the spouse's attendance problems at work or school has been offered, nor has evidence been submitted to substantiate the claimed adverse physical ailments resulting from her stress. The lack of documentation appears to indicate that while the applicant's spouse may understandably be experiencing some anxiety as a result of her husband's immigration situation, it is not so severe that CIS should conclude that would suffer extreme hardship.

Little else has been submitted in support of the requested waiver. Although counsel has submitted newspaper media accounts of the difficulties facing Jamaica, these difficulties are matters which the population as a whole experiences as a result of that country's lower standard of living and economic situation. While life in Jamaica will undoubtedly be more difficult for the applicant's spouse, it cannot be said to be extreme hardship, as there do not appear to be factors unique to the applicant's spouse or to U.S. citizens living in Jamaica, as opposed to the general population of Jamaica. We further note that while counsel has made various assertions regarding the difficulties the applicant's wife would face should she decide to relocate in Jamaica with the applicant, there is little in the way of objective evidence to support those claims, or that the applicant's spouse must relocate to Jamaica. Moreover, the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.